



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

November 19, 2010

J. Russell Jennings
Commissioner
Juvenile Justice Authority
714 SW Jackson
Suite 300
Topeka, KS 66603

Re: Kansas Juvenile Justice Authority Final Compliance Review Report (09-OCR-0280)

Dear Commissioner Jennings:

On June 18, 2007, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the Kansas Juvenile Justice Authority (KJJA), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the KJJA's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the KJJA's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt 38 (Equal Treatment Regulations).

On June 16 and 17, 2009, the OCR conducted an onsite visit to the KJJA's offices in Topeka, Kansas, to interview KJJA administrators and to conduct a training program for KJJA administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR would like to thank the KJJA staff, especially Don Chronister, for assisting OCR Attorney Advisor Debra Murphy during the onsite visit.

The OCR sent the KJJA a draft Compliance Review Report on August 23, 2010, and provided you with 30 days within which to provide the OCR additional information or factual corrections to the draft report. On September 9, 2010, Mr. Chronister notified Ms. Murphy that the KJJA had reviewed the draft Compliance Review Report, and had no additional information or factual corrections to offer. Therefore, this serves as the OCR's Final Compliance Review Report.

Based on the KJJA's responses to our data request and the information that the OCR gathered during our onsite visit, the OCR concludes, in regard to the limited scope of our review, that the KJJA has taken steps to substantially comply with the federal civil rights laws that the OCR

enforces. Nonetheless, we have reservations about whether the KJJA has adequate procedures in place to respond to discrimination complaints from beneficiaries and employees of subrecipients, and whether it is sufficiently training and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the KJJA's methods for monitoring the civil rights compliance of subrecipients.

I. Overview

This Compliance Review Report first examines the KJJA's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the KJJA's implementation of the DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the KJJA's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the KJJA used the following four tools: (1) standard assurances, (2) onsite visits and other monitoring methods, (3) training programs and technical assistance, and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in employment and the delivery of services.

1. Standard Assurances

The KJJA currently administers subgrant awards funded by OJP's Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention (OJJDP). Before the KJJA releases DOJ funds, subrecipients must sign the following three (3) documents: (1) Grant Assurances for Federal Juvenile Justice and Delinquency Prevention Act Grant Program (Grant Assurance Document), (2) Equal Employment Opportunity Plan Certification Form (EEO Form), and (3) Federal Grant Reporting Requirements.

The Grant Assurance Document contains four provisions that relate to civil rights. First, the Grant Assurance Document contains a provision, whereby subrecipients assure the KJJA that they have formulated an equal employment opportunity plan (EEO), if required, or have completed a certification of exemption. Subrecipients further assure the KJJA that they have designated a "civil rights person who has lead responsibility for insuring that all applicable civil rights requirements are met."

Second, the Grant Assurance Document contains a section entitled "Civil Rights and Nondiscrimination," which specifies that subrecipients will comply "with all applicable nondiscrimination requirements", including several statutes and regulations that are specifically enumerated.¹

¹ The grant assurance contains the following provision: "The Subgrantee assures that all grant projects provided by the Subgrantee shall comply with all applicable nondiscrimination requirements including, but not limited to, the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789(d); Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990); Title IX of the Education

Third, the Grant Assurance Document contains a section entitled “Limited English Proficiency” whereby subrecipients assure the KJJA that “reasonable steps have been or will be taken to ensure meaningful; access by persons with limited English proficiency that are eligible for assistance or services from any Subgrantee program assisted under JJDP.”

Fourth, the Grant Assurance Document contains a section entitled “Other Regulations, If Applicable,” which lists several federal regulations with which Subrecipients must comply, if they are applicable. This list includes “Equal Treatment for Faith-Based Organizations,” at 28 C.F.R. part 38, and “Nondiscrimination, Equal Employment Opportunity; Policies and Procedures,” at 28 C.F.R. part 42.

The EEOP Form that the KJJA provides to subrecipients is identical to the EEOP Certification form found at the OCR’s website, with an additional reference to the OCR’s online forms and instructions for completing an EEOP.

The document entitled Federal Grant Reporting Requirements contains information on procedures for opening a grant, quarterly progress reporting requirements, grant payments, budget revision requests, program revision requests, equipment purchases, on-site and desk reviews, recordkeeping/audit procedures, and grant termination procedures. The only provisions that relate to civil rights inform subrecipients that the original Grant Assurance Document and the original EEOP Form must be signed by the head of the applicant organization and returned to the KJJA in order for the award to be considered open.

During the OCR’s onsite visit, the KJJA stated that the Grant Assurance Document, EEOP Form and Federal Grant Reporting Requirements are given to subrecipients after they are selected to receive an award, but must be signed prior to drawing down funds.

2. Onsite Visits and Other Monitoring Methods

In its response to the OCR’s data request, the KJJA explained that it monitors the performance of its subrecipients through annual on-site monitoring visits and periodic desk reviews. The document entitled Federal Grant Reporting Requirements that is given to subrecipients once they are selected for an award and that is discussed in Section I.A.1. of this Compliance Review Report, describes the KJJA’s review procedures to subrecipients. Approximately two to three weeks prior to a review, the KJJA mails to the subrecipient a blank copy of the Site Visit Monitoring Report (Monitoring Report), which the KJJA staff will ultimately complete as part of the review of each subrecipient. The Monitoring Report contains questions about the program’s impact, major challenges, trends in youth service, gaps in services, progress toward objectives, financial soundness and accuracy, and fidelity to evidence-based practices. Additionally, the Monitoring Report contains the following questions about civil rights:

Amendments of 1973; the Age Discrimination Act of 1975, 42 U.S.C. §6101 *et seq.*; Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C, D, E, and G; and Department of Justice Regulations on disability discrimination, 28 C.F.R. Part 35 and Part 39. The Subgrantee agrees that in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, age, or disability against the Subgrantee, the Subgrantee will forward a copy of the findings to the JJA and the U.S. Department of Justice, Office of [sic] Civil Rights, Office of Justice Programs.”

Equal Employment Opportunity Plan (local or state unit of government only with more than \$25,000 in DOJ funds and more than 50 employees)

Has the agency has any adverse findings of discrimination as a result of a due process hearing? Yes No

If yes, did the agency notify DOJ Office of Civil Rights? Yes No

Is the agency required to have an Equal Employment Opportunity Plan (EEOP) pursuant of 28 CFR 42.3-1 [sic], et seq.? Yes No

If no, why is the applicant exempt?

Less than 50 employees Non-profit organization

Less than \$25,000 in DOJ funds per year Medical Institution

Indian Tribe Educational Institution

If Yes, has an EEOP plan been developed and maintained? Yes No

(Need to see copy)

There are no other questions on the Monitoring Report that relate to civil rights. However, all Juvenile Intensive Supervised Probation and Community Case Management programs are required to develop Policy and Procedure manuals modeled on the KJJA's Community Supervision Standards (CSS). The CSS include a model policy on non-discrimination, and the KJJA told the OCR that it reviews this as part of the on-site visit. Additionally, the KJJA reported in its data response that it requires all subrecipients have in place equal employment opportunity policies that govern non-discrimination in employment. The KJJA reports that it reviews this policy during its on-site visits, although this was not specifically included on the Monitoring Report.

Upon completion of the review, the KJJA will prepare a report that summarizes the findings, include deficiencies and corrective actions that the subrecipient must take. The corrective actions include target completion dates, and the KJJA provides technical assistance to help the subrecipient come into compliance.

Although the KJJA conducts on-site visits annually, it might also conduct a desk audit of a subrecipient. For a desk audit, the KJJA asks the subrecipient to complete and return the Grant Project Review Report, which contains financial and programmatic statistical information for a pre-determined three month period. The KJJA reviews this report for progress toward program goals and payment of allowable costs, but does not review it for any civil rights related issues.

3. Training and Technical Assistance

The KJJA reports that it provides technical assistance to subrecipients, as it is needed. Areas that often require technical assistance include completing EEOPs and completing corrective action following an on-site visit. Additionally, the KJJA conducts a mandatory training for all new subrecipients and new employees of continuation subrecipients. During this training, the KJJA reviews the Grant Assurance Document, and each of the civil rights requirements covered therein. Additionally, all faith-based subrecipients are given a copy of the Equal Treatment Regulations during the training, and the KJJA discusses what types of activities may not be supported by DOJ funds.

4. Complaint Procedures

The KJJA has a written policy which governs discrimination complaints from KJJA employees and applicants for employment. This policy is entitled KJJA Internal Management and Policy Procedure 02-101, Equal Employment Opportunity and Non-Discrimination [KJJA Non-Discrimination Policy], and prohibits discrimination on the basis of race, gender, gender identity, sexual orientation, color, political or religious affiliation, national origin, age, military or veteran status, and disability. The KJJA's Non-Discrimination Policy sets out the procedures for filing a complaint of discrimination or retaliation and investigating alleged wrong-doing. The Non-Discrimination Policy also includes a complaint form, although failure to use the KJJA complaint form does not preclude an investigation.

KJJA employees, like all state employees, are also governed by the policies and procedures of the State of Kansas, Department of Administration, Division of Personnel Services (Personnel Division). The Personnel Division website directs users to the Kansas Human Rights Commission (KHRC) for information about employment discrimination.² The KHRC is a statutorily created body whose members are appointed by the governor, and whose duties include receiving, initiating, investigating and adjudicating complaints of discrimination in employment, public accommodations and housing because of race, color, sex, religion, disability, national origin or ancestry, and complaints alleging discrimination in housing because of familial status. Accordingly, it appears that employees of KJJA subrecipients may also file discrimination complaints with the KHRC, as well as employees of the KJJA itself. Additionally, beneficiaries of subrecipients may be able to file discrimination complaints with the KHRC if the program or activity of the subrecipient qualifies as housing.³

The KJJA has no policies or procedures that apply specifically to the employees and beneficiaries of subrecipients. However, the KJJA wrote in its Data Response that it has a "passive complaint system" in place, meaning that the KJJA Inspector General has statutory authority to investigate any entity that has contracted with the Commissioner. Additionally, as discussed in Section I.A.2. of this Compliance Review Report, the KJJA ensures that subrecipients have such an equal employment policy when it conducts on-site reviews.

B. Monitoring Compliance with Equal Treatment Regulations

The purpose of the Equal Treatment Regulations is to ensure that "[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible." 28 C.F.R. § 38.1(a). The Regulations prohibit DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization's religious character or affiliation. *Id.* In evaluating the KJJA's equitable treatment of faith-based organizations, the Compliance Review focused on two issues: (1) the review process for making awards to applicant faith-based organizations, and (2) procedures for ensuring that funded faith-based organizations comply with applicable federal civil rights laws.

² Information about the KHRC, employment discrimination policies, and complaint procedures are not obviously labeled as such on the Personnel Division website.

³ The statute also prevents discrimination in public accommodations, which is defined as "...any person who caters or offers goods, services, facilities and accommodations to the public [including] lodging establishment or food service establishment...any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public." Kan. Stat. Ann. § 44-1002 (h) (2005). Therefore, it is unlikely that subrecipients of the KJJA are ever considered public accommodations.

1. The Process for Making Awards to Applicant Faith-Based Organizations

As discussed in Section I.A.1. of this Compliance Review Report, the KJJA administers grants funded by the OJJDP. During the OCR's onsite visit, the KJJA staff explained its application process, and the KJJA submitted relevant sections of its Grant Application Procedure Manual in its data response. The KJJA announces competitive funding opportunities in several ways. It places grant application announcements in the Kansas Register; it sends grant announcements to a mailing list comprised of the Governor's Grants Office, United Way offices in the state, Community Supervision Agencies, current KJJA subrecipients, and past KJJA applicants; it posts grant application announcements on its web-site; and it asks administrative contacts to publicize the availability of grants through local service provider networks. The KJJA also hosts a pre-bid teleconference for prospective applicants, where it explains the year's funding priorities, evidence based programming, OJJDP performance measures and the grant review process. The KJJA also informs potential applicants about any restrictions on the use of grant money, including the Equal Treatment Regulations' prohibition on using DOJ funds to support inherently religious activity.

Once applications are submitted, they are reviewed by a panel of grant readers, about half of whom are recruited from the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (KAG), a group established in accordance with the JJDP and filled by governor appointees. The other half of the grant readers are from regional prevention centers and other juvenile justice organizations, and former grantees. KJJA staff and the chair of the KAG grant committee train all grant readers, which includes training on the Equal Treatment Regulations. Each grant application is read by five (5) grant readers, who score each grant in the areas of program abstract, program funding history, budget, explanation of grant program, and success of previously funded programs. Although the scoring system does not provide points specifically for civil rights compliance, the KJJA staff can reduce scores based upon past civil rights problems, such as failure to develop an EEOP or having a past finding of discrimination. The KJJA staff then sends the applications, along with applications scores and funding recommendations, to the KAG, which in turn makes funding recommendations to the full commission.

During the OCR's onsite visit, the KJJA assured the OCR that it treats faith-based organizations the same as any other applicant, and that grants are awarded solely based on the merits of the program. In FY 2007, the KJJA received three (3) applications from faith-based organizations, and funded one (1). In FY 2008, the KJJA received one (1) application from a faith-based organization, which was funded.

The faith-based applicants in FY 2007 were as follows: (1) Catholic Social Services applied for and received \$30,888 from the Title II formula grant program to hire a bi-lingual (Spanish) program assistant to work with Hispanic teenage mothers. This staff person assists the clients in completing high school and planning for post-high school education and develops parenting skills through monthly workshops with experienced mothers. (2) Prevention Network Corporation applied for \$125,430 from the Title II formula grant program, but was denied funding because it received the lowest score by grant readers out of all applications for that year. (3) Episcopal Social Services applied for \$14,459 from the Title II Formula program, but was denied funding because of duplication of services. In FY 2008, the only faith-based applicant

was Catholic Social Services, which again applied for and received \$30,888 to support a bilingual employee in its program for Hispanic teenage mothers.

2. Procedures for Ensuring that Faith-Based Organizations Comply with the Equal Treatment Regulations

The KJJA does several things, through both the grant making process and recipient review process, to ensure that faith-based applicants and recipients comply with the Equal Treatment Regulations. First, as mentioned in Section I.B.1. of this Compliance Review Report, the grant readers receive training on the Equal Treatment Regulations, including activities that cannot be supported with federal funds. If faith-based organizations are included in the applicant pool, the KJJA gives all grant readers copies of the Equal Treatment Regulations. Second, recipients must sign the Grant Assurance Document, which includes a reference to the Equal Treatment Regulations. If a recipient is a faith-based organization, the KJJA reports in its Data Response that it discusses with the recipient allowable and prohibited expenses. Lastly, the KJJA reports that during its on-site reviews, it pays “special attention” to the use of federal funds by faith-based organizations to make sure that they are not used to support inherently religious activity. Although the Equal Treatment Regulations are not specifically mentioned in the Monitoring Report discussed in Section I.A.2. of this Compliance Review Report, the KJJA reported in its Data Response that it may interview beneficiaries during onsite visits to confirm how federal funds are being used.

II. Recommendations

The KJJA already has several procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing the laws that the OCR enforces, including the Equal Treatment Regulations, in its Grant Assurance Document. To strengthen the KJJA’s monitoring efforts, the OCR offers the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints from employees and beneficiaries of subrecipients; (2) reference DOJ’s LEP Guidance in the Grant Assurance Document; (3) monitor for compliance with civil rights requirements during onsite monitoring visits; and (4) provide training to DOJ subrecipients on the civil rights laws that the OCR enforces.

A. Develop Complaint Procedures for Beneficiaries and Employees of Subrecipients

While the KJJA and the State of Kansas have written policies in place for receiving and investigating discrimination complaints from employees, the KJJA does not have any procedures for addressing discrimination complaints from employees or beneficiaries of KJJA subrecipients. Accordingly, the KJJA should adopt a policy for addressing discrimination complaints that includes at a minimum the following elements:

- designating a coordinator who is responsible for overseeing the complaint process;
- notifying employees and beneficiaries of subrecipients of prohibited discrimination in funded programs and activities and the KJJA’s policy and procedures for handling discrimination complaints;
- establishing written procedures for receiving discrimination complaints from the employees and beneficiaries of KJJA subrecipients;

- referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the Kansas Human Rights Commission, or referring the complaint to the OCR, which will review the complaint and work with the KJJA to resolve the complaint;
- notifying the OCR in writing when the KJJA refers a discrimination complaint to another agency or when the KJJA investigates the complaint internally; and
- training KJJA program staff members on the responsibility to refer discrimination complaints, or potential discrimination issues, to the KJJA's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Additionally, the OCR has drafted the enclosed template complaint procedures that the KJJA may find helpful as it develops procedures for addressing discrimination complaints from employees and beneficiaries of subrecipients. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the KJJA.

B. Reference the DOJ LEP Guidance in the Grant Assurance Document

As mentioned in Section I.A.1. of this Compliance Review Report, the document containing grant assurances includes a provision that "reasonable steps have been or will be taken to ensure meaningful access by persons with limited English proficiency that are eligible for assistance or services from any Subgrantee program assisted under JJDPA." In order to more clearly explain to subrecipients what their obligations are to LEP applicants and beneficiaries, the OCR recommends inserting a direct reference into the assurance document to DOJ's *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, which can be found at 67 Fed. Reg. 41455 (June 18, 2002) or at www.lep.gov. This way, subrecipients will be directed to more complete information about how a program or activity might be made accessible to LEP individuals.

C. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits

The KJJA is taking steps to ensure that KJJA subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits. These onsite monitoring visits, however, do not fully address federal civil rights laws. Pursuant to the KJJA's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the KJJA should expand the civil rights component to its onsite monitoring visits to encompass more than its current questions about EEOPs and possible findings of discrimination. The KJJA should be sure to evaluate a number of civil rights requirements that are binding on recipients of federal funding (e.g., whether the subrecipient has an EEOP on file or has sent one to the OCR for review, whether the subrecipient has findings of discrimination to report to the OCR, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972, or whether the subrecipient is taking steps to ensure meaningful access to its services to individuals with limited English proficiency). Additionally, the KJJA should ask

questions on whether the subrecipient is complying with DOJ's Equal Treatment Regulations, including the prohibitions against using federal funds to engage in inherently religious activities and discriminating against program beneficiaries on the basis of religion. The OCR has developed the enclosed Federal Civil Rights Compliance Checklist that contains relevant questions regarding civil rights compliance; the KJJA may wish to adapt the checklist in creating its own monitoring tools.

D. Provide Comprehensive Training on Federal Civil Rights Laws

Other than a general discussion of the information contained in the assurances, the KJJA does not currently provide any training for its subrecipients about their civil rights obligations. To ensure that subrecipients fully understand their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, or sex, the KJJA should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The KJJA should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the KJJA provides the training in person, during a teleconference, or through other means. The OCR is available to provide the KJJA with technical assistance in developing civil rights training programs.

III. Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the KJJA has taken steps in substantially complying with the federal civil rights laws that the OCR enforces. The OCR is available to provide technical assistance to the KJJA in addressing the concerns raised in this Compliance Review Report. **Immediately upon receipt of this letter, please have a responsible KJJA official contact Attorney Advisor Debra Murphy to develop a timeline and goals for implementing the OCR's recommendations.**

Thank you for your cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Murphy at (202) 305-0667.

Sincerely,

/s/

Michael L. Alston
Director